

C&J ASSOCIATES PEST CONTROL,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 2:06-cv-884-MEF
)	
BOB RILEY, et al.,)	
)	
Defendants.)	

MOTION TO DISMISS

COMES NOW John Bloch, and Joe Debrow, sued in both their official and individual capacities, and move this Honorable Court pursuant to Rule 12 (b) of the Federal Rules of Civil Procedure to dismiss all the claims against them based on the following grounds:

- 1) The Plaintiff's claims are barred by the statute of limitations.
- 2) The Plaintiff has failed to state a claim against the Defendants upon which relief can be granted.

Wherefore, the above stated grounds considered, John Bloch and Joe Debrow requests that this Honorable Court enter a judgment in their favor dismissing all the Plaintiff's claims against them.

Done this 17th day of November 2006.

Respectfully submitted,

TROY KING
ATTORNEY GENERAL

s/Robert J. Russell
Robert J. Russell
RUSO12
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

State Finance Department
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Montgomery, Alabama 36130

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and mailed a true and correct copy by U. S. Mail, postage prepaid to the following:

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**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA,
NORTHERN DIVISION**

C&J ASSOCIATES PEST CONTROL,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 2:06-cv-884-MEF
)	
BOB RILEY, et al.,)	
)	
Defendants.)	

BRIEF SUPPORTING MOTION TO DISMISS

COMES NOW John Bloch, and Joe Debrow, sued in both their official and individual capacities, by and through the undersigned counsel, and submits the following brief in support of their Motion to Dismiss, filed contemporaneously herewith.

Claims are Barred by the Statute of Limitations

The statute of limitations for Plaintiff's claim is two years. See Jones v R.R. Donnelly & Sons Co., 541 U. S. 369, 371 (2004); Dooley v Automation USA Corp., 218 F. Supp.2d 1270, 12778 (N.D. Ala 2002); Hithon v. Tyson Foods, Inc. 144 Fed Appx. 795,798-99 (11th Cir.2005); Ala. Code Section 6-2-38; also see Lufkin v McCallum, 956 F.2nd 1104, 1105 (11th Cir. 1992) (l); Trawinski v. United Technologies, 313 F.3rd 1295, 1298 (11th Cir. 2002). The Statute of limitations begins to run when the discriminatory act occurs, which from the claims, occurred many times prior to the last date mentioned in the complaint (October 1, 2004). Defendants Bloch and Debrow were served on October 5, 2006, and given the prior occurrences, were filed outside the two-year limitations period stated in Section 6-2-38(1) of the Alabama Code. Consequently,

Plaintiff's claims are due to be dismissed as untimely because they were brought outside the limitations period which began when Plaintiff should reasonably have discovered the injury.

Plaintiff Fails to State a Claim

Jurisdiction of this court is invoked pursuant to 28 U.S.C 1343 (3) (4). This action is authorized by Title 42 U.S.C., 1981, 1983, 1985, 1986 seeking to restrain the defendants, their servants, agents, employees, successors and anyone acting in concert and participation with them from depriving plaintiff, under color of state law, statute, ordinance, regulation, custom or usage, of rights, privileges, and immunities secured by the Constitution and Statutes of the United States. Jurisdiction is also invoked pursuant to the provisions of Title 28 U.S.C. 1331 (3) (4).

As to these Defendants, this is essentially a conspiracy claim alleging that two employees of the State Department of Agriculture and Industries, in their individual and official capacities, acted outside the scope of their employment and failed to perform their ministerial duties because of racial bias and preference for a white vendor and by conspiring and deciding to find a way not to award the contract to Plaintiff. The Defendant claims the Plaintiff has failed to state a claim upon which relief can be granted pursuant to the FRCP 12 (b) (6) in that allegations are vague, indefinite, unsupported by specific factual allegations, ie, plaintiff fails generally to state the what, when, where, why, and how of the offenses claimed and has over-generalized in his characterization of the offenses claimed as "improprieties and racial bias", and then does nothing

more than assert that a conspiracy exists. See Denney v. City of Albany, 247 F.3d 1172, 1190 (11th Circuit Cir. 2001). See Fullman v. Graddick, 739 Fed 2d 553, 557 (11th Cir, 1984). In deciding whether a complaint states a claim, the court must accept all well-pleaded facts as true and draw all inferences in the plaintiff's favor. Oladeinde v. City of Birmingham, 963 F2nd 1481, 1485 (11th Cir. 1992). However, a court may not assume that a plaintiff can prove facts that he has not alleged or that a defendant has violated laws in ways that have not been alleged in the complaint. Beck v. Interstate Brands Corp., 953 F 2nd 1275, 1276 (11th Cir. 1992). Moreover, "conclusory allegations, unwarranted deductions of fact or legal conclusions masquerading as facts will not prevent dismissal." Oxford Asset Mgmt. Ltd v. Jaharts, 297 F. 3rd 1182, 1188 (11th Cir. 2002). Mere statements contained in the complaint that plaintiffs were not awarded a contract to perform pest control services for the Alabama Department of Mental Health because of their race are insufficient to survive the motions to dismiss filed by Defendants Bloch and Debrow. Wherefore, this Defendant Bloch and Debrow prays this court to enter a judgment dismissing all claims against them.

Done this 17th day of November, 2006.

Respectfully Submitted,

s/Robert J. Russell
Robert J. Russell
RUS012
Assistant Attorney General

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Respectfully submitted,

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s/Robert Jackson Russell, Sr.
Robert Jackson Russell, Sr.
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